

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

(916) 393-1322



August 16, 1979

ALL-COUNTY INFORMATION NOTICE I-90-79**TO: ALL COUNTY WELFARE DIRECTORS****SUBJECT: FOOD STAMP FRAUD DISQUALIFICATION HEARING PROCEDURES****REFERENCE: MANUAL OF POLICIES AND PROCEDURES (MPP) SECTION 22-200 ET SEQ.**

The purpose of this is to notify you that the Department of Social Services has implemented procedures for scheduling and conducting state hearings for Food Stamp Fraud Disqualifications proceedings.

Attached to this you will find two forms, the Request for Administrative Fraud Hearings (DPA 354 - 6/79) and the Notice of Food Stamp Fraud Disqualification Hearing (DPA 353 - 6/79). The following procedures will apply to the use of these two forms:

DPA 354:

This form is to be used by the county to request the disqualification hearing. There are two essential sections on the form which must be completed carefully by the requesting county: one - the specific findings (charges) made against the Respondent(s) and two - a full and complete summary of the evidence the county has secured that will support the findings (charges).

These sections are essential because the information provided will be sent to the Respondent(s) when the Department sends the notification of hearing and it will provide the Respondent(s) with notice of the requested action and the specific evidentiary basis for the action.

The Department does not intend to review and/or screen the county requests during the first stages of implementing this program even though the regulations provide for this option (see Manual of Policies and Procedures (MPP) Section 22-202.2). Therefore, all requests will be routinely processed without review and in accordance with the following procedures.

The request when received by the Department will be forwarded to the calendaring Unit, Office of the Chief Referee. A person in that unit will contact the requesting county to secure hearing space for a date approximately 35 to 40 days later. Respondent(s)

are entitled to thirty (30) days advance notice of hearing date, time and location - see MPP Section 22-202.3. The secured date will not be during a regular calendar in the county because the proceedings could be somewhat protracted in comparison with more routine cases. Thus we wish to give the Hearing Officer the opportunity to allow sufficient time for everyone to make a complete presentation without the Hearing Officer having to worry about cases stacking up, etc.

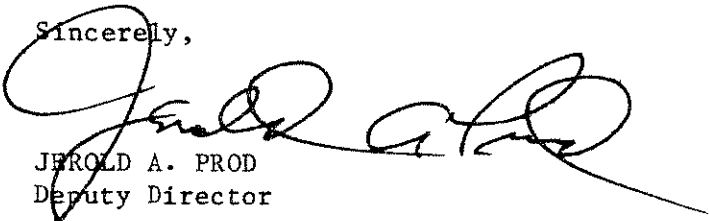
DPA 353:

This form will be used by the Department to notify all parties of the time, date and location of the hearing. Accompanying the form sent to the Respondent(s) will be a copy of the DPA 354 and one copy each of the DPA 353 A (explanation of the Fraud Disqualification Hearing Process) (please see attachment), the DPA 353 B (selected sections from MPP Section 22-000 referred to in MPP Section 22-201.3) and a complete set of MPP Section 22-200 regulations.

Counties wishing to secure copies of the DPA 354 (Request for Administrative Fraud Hearing) may do so by making a request with the DSS Warehouse.

Should you have any questions about these procedures, please contact Lonnie M. Carlson, Assistant Chief Referee, at (916) 393-1322 or ATSS 453-2218.

Sincerely,



JEROLD A. PROD
Deputy Director

Attachments

cc: CWDA

**NOTICE OF FOOD STAMP
FRAUD DISQUALIFICATION HEARING**

CASE NUMBER

_____ County has requested that a fraud disqualification hearing be held on your case. Accordingly, the State Department of Social Services has scheduled a hearing as follows:

| LOCATION | DATE | TIME |
|----------|------|------|
|----------|------|------|

Attached to this form you will find a copy of the charges registered against you by the county and a summary of the evidence in support of those charges. You may contact the person named on the attachment to schedule an appointment to examine the documentary evidence.

If you do not attend the hearing, the State's decision will be based solely on the evidence presented by the county, and could result in your being disqualified from receiving Food Stamps for three (3) months.

You should know that the results of this hearing will not prevent the County, State or Federal governments from prosecuting you for fraud in a civil or criminal court action, or from collecting any overissuances of Food Stamp benefits related to the alleged fraud.

The regulatory authority which allows Fraud Disqualification Hearing is Section 63-805 of the Department of Social Services Manual of Policies and Procedure.

Attachments

Attached you will find:

1. DPA 354, Request for Administrative Fraud Hearing (Food Stamps), which summarizes the charges and county's evidence.
2. DPA 353A, an explanation of the Fraud Disqualification Hearing Process which describes how the hearing will be conducted and what you can expect to happen during the hearing.
3. DPA 353B, containing sections of the DSS Manual of Policies and Procedures which explain general Fair Hearings processes, procedures and rights.
4. DSS Manual of Policies and Procedures, Section 22-200 et seq.

PLEASE SEE THE BACK OF THIS FORM FOR A SUMMARY OF YOUR RIGHTS IN THIS ACTION

Distribution: 1 - Claimant 2 - State 3 - County 4 - Authorized Representative

YOUR RIGHTS

You have the right to:

1. Examine parties and witnesses.
2. Conduct cross-examination as may be required for a full disclosure of the facts.
3. Introduce exhibits.
4. Examine all documents prior to and during the hearing.
5. Question opposing witnesses and parties on any matter relevant to the issues even though the matter was not covered in the direct examination.
6. Make oral or written argument.
7. Rebut the evidence.
8. Call the county to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the county shall provide when called, the phone number of a lawyer referral service of the local bar association. The county person's phone number is located on the attachment relating to charges and summary of evidence.
9. Call Public Inquiry and Response at 800-952-5253 (toll free number) to receive further information about these rights from a person who speaks your language.
10. Call the above toll free number to request an interpreter for your hearing if you have trouble understanding English.
11. Call a Departmental Calendar person collect at (916) 445-8525 to have the hearing conducted in your home if because of some physical disability you are unable to travel to the location referred to on the reverse side.
12. Call a Departmental Calendar person collect at (916) 445-8525 to request that the hearing be postponed. A postponement can be granted for up to 30 days.
13. **INFORMATION PRACTICES** – This hearing is being conducted and relevant information is being collected under the authority of Section 63-805 of the California Food Stamp Regulations. A case file will be established by the Office of the Chief Referee. You have the right to examine the materials that constitute the record for decision. Any information provided may be shared by the Chief Referee with the county welfare department, the state court system, the U.S. Departments of Agriculture, and Health, Education and Welfare.

**REQUEST FOR ADMINISTRATIVE
FRAUD HEARING (Food Stamps)**

*Send the top two copies to the State.
Retain the third copy for your file.*

**Office of the Chief Referee
State Department of Social Services
744 P Street, Mail Station 19-36
Sacramento, CA 95814
Attention: Fraud Hearings**

RESPONDENT:

NAME

ADDRESS

CASE NUMBER

This county has determined that a Food Stamp fraud disqualification action should be brought against the above-named respondent(s) and requests that an administrative fraud hearing be scheduled pursuant to Section 22-200 of the DSS Manual of Policies and Procedures.

The county further maintains that fraud has occurred as defined in Section 63-805.2 of the DSS Manual.

EXPLAIN COUNTY FINDINGS. USE ATTACHMENTS IF NECESSARY. (See DSS Manual Section 22-202.1)

SUMMARIZE THE EVIDENCE THE COUNTY WILL PRESENT AT THE HEARING IN SUPPORT OF ITS CHARGES. (Please set out in summary order the documents, investigation reports, and other evidence you possess and intend to present at the hearing) USE ATTACHMENTS IF NECESSARY.

SIGNATURE

NAME (PRINTED)

TITLE

COUNTY

ADDRESS

TELEPHONE NUMBER

DATE OF REQUEST

FRAUD DISQUALIFICATION HEARINGS INFORMATION

A fraud disqualification hearing is an informal proceeding between you, an impartial hearing officer assigned by the State Department of Social Services and a representative of the county. It is not a court hearing. You may, if you wish, have a lawyer or other representative present with you. The hearing officer is in charge.

This fraud hearing has been initiated at the request of the county welfare department. As the enclosed notices indicate, the county has determined that you are subject to disqualification from the food stamp program for a period of three months due to your alleged act of fraud in obtaining food stamp benefits to which you were not entitled. Before the county can institute the disqualification penalty, the law requires that the county's action be reviewed by a state hearing officer through the fraud hearing procedure. The hearing officer will review the charges and evidence of fraud submitted by the county. He/she will also consider any evidence and arguments you may have. Even if you do not attend the hearing, the county's charges and evidence will be reviewed and you will receive a hearing decision. If the hearing decision decides that fraud disqualification is appropriate, the county can then proceed to disqualify the members of the household who have committed fraud from the food stamp program. This disqualification will last for three months. Only the household members who have committed fraud will be disqualified. (Other household members will remain eligible.)

Time and Place of Hearing

The enclosed notice indicates the exact date, time and place of your hearing.

If you wish to postpone the hearing, a postponement can be granted for up to thirty days. Send a written request to the Sacramento Office of the Chief Referee or call collect at (916) 445-8525.

Hearings are usually held at public buildings in the county seats. However, if you are unable to attend the hearing at the hearing location for reasons of poor health, the hearing will be held in your home or in another place agreed to by the county and you. Therefore, if you are in poor health, write the Office of the Chief Referee explaining your situation or call the number listed above.

Before the Hearing

You are not required to attend the fraud disqualification hearing. But if you do not appear, the decision will be based entirely on evidence presented by the county. If you do not appear, yet still wish a hearing, you must request that your hearing be rescheduled and show a good reason. Please write or call the Sacramento Office of the Chief Referee for this purpose.

You may also authorize someone who knows your circumstances to appear for you at the hearing. If you plan to have someone appear for you, send the name, address, and telephone number of your representative to the Office of the Chief Referee. You may go to the hearing with your representative and you may ask others who know the facts to be present at the hearing to tell the hearing officer what they know about the case. If you want to have at your hearing a person or papers important and relevant to your case, you may request that a subpoena be issued. To request a subpoena **before** the date of the hearing, write or call the office listed below which is closest to you:

Office of the Chief Referee
744 P Street, M.S. 19-36
Sacramento, California 95814
Phone (916) 393-1322

Office of the Chief Referee
107 South Broadway
Los Angeles, California 90012
Phone (213) 620-4600

Office of the Chief Referee
One Hallidie Plaza
San Francisco, California 94102
Phone (415) 557-0526

State the name of the person you want subpoenaed or describe the documents you want subpoenaed, and tell why they are important to your hearing. You may also request a subpoena from the hearing officer at your hearing.

You have a right to look at your case record and the regulations before the hearing. Also, you may prepare a written statement of your position to present to the hearing officer at the hearing.

At the Hearing

If you have notified the Office of the Chief Referee before your hearing that you need language services, an interpreter will be present at your hearing to assist you and the other participants. You will have an opportunity to tell the hearing officer why you do not believe fraud occurred and the county representative will have an opportunity to explain why the county believes that fraud did occur. You and the county representative may question each other and any witnesses who are present. The hearing officer may also ask questions to bring out all the facts.

A permanent record of all that is said at the hearing will be made on a tape recorder. The recording is for use in making the decision and is kept in case there is a dispute about the decision. Usually the recording is destroyed 18 months after the final decision is made.

The Decision

After the hearing is completed, the hearing officer will prepare a written decision. This decision is subject to the review of the Director of the Department of Social Services. The Director has the authority to reject the hearing officer's decision and issue his own decision or to order a further hearing. If the Director issues his own decision that decision is binding, but you will receive a copy of each.

County Action Based on Decision

If the decision finds that fraud did occur, the county welfare department will send you a notice regarding when the three (3) month disqualification period will begin and how many stamps the rest of your household is entitled. If the decision finds that fraud did not occur, the county will not take disqualification action.

Appeal

If you are dissatisfied with the decision which finds that fraud occurred and disqualification is appropriate, you have the right to file petition with the Superior Court to seek judicial review. The petition must be filed within one year after you receive the decision.

REGULATORY INFORMATION ON FOOD STAMP FRAUD AND ADMINISTRATIVE FRAUD HEARINGS

The following are excerpts from the Department of Social Services Manual of Policies and Procedures which contain regulations on Food Stamp Fraud, Administrative Fraud Hearings and court imposed disqualification.

63-805 FRAUD DISQUALIFICATION

63-805

- 1 **Fraud disqualification penalties.** Individuals found to have committed fraud through an administrative fraud hearing shall be ineligible to participate in the Program for three months. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six months and not more than 24 months as determined by the court. The CWD shall disqualify only the individual and not the entire household.
- 2 **Definition of fraud.** For purposes of determining at an administrative fraud hearing whether or not fraud was committed, fraud shall consist of any action by an individual to knowingly, willfully and with deceitful intent:
 - .21 Make a false statement to the county, either orally or in writing, to obtain benefits to which the household is not entitled;
 - .22 Conceal information to obtain benefits to which the household is not entitled;
 - .23 Alter ATP's to obtain benefits to which the household is not entitled;
 - .24 Use coupons to buy nonfood items such as alcohol or cigarettes;
 - .25 Use or possess improperly obtained coupons or ATPs; or
 - .26 Trade or sell coupons or ATP's.
- 3 **Notification to applicant households.** The county welfare department shall inform the household in writing of the disqualification penalties for committing fraud each time it applies for program benefits. The penalties shall be written in clear, prominent, and bold face lettering on the application form.
- 4 **Administrative disqualification.** A request for an administrative fraud hearing shall be submitted to the OCR, DSS by the county whenever the county has documented evidence to substantiate that a currently certified household member has committed one or more acts of fraud as defined in this section and the county believes the household member should be disqualified. Administrative fraud hearings shall be conducted by the DSS in accordance with the provisions of Division 22. Fraud hearings shall not be conducted if the amount the county suspects has been fraudulently obtained is less than \$35 or if the value of the ineligible items that have been purchased with food stamps is under \$35. The burden of proving fraud is on the county. If the household member is not certified when the suspected fraud is discovered, the county shall initiate the hearing when the household member becomes certified. The administrative fraud hearing may still be conducted regardless of whether other legal action is planned against the household member.
- 41 Disqualifications relating to the transfer of resources shall be handled in accordance with 63-501.6, unless fraud can be established as defined in 63-805.21 and 22.
- 5 **Participation while awaiting a hearing.** A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the county cannot disqualify a household member for fraud until the hearing official finds that the individual has committed fraud, the county shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the action for which the household member is suspected of fraud does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its Notice of Expiration fails to reapply. The county shall also reduce or terminate the household's benefits if it has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of fraud and the resulting fraud hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the county may have facts which substantiate that a household failed to report a change in its circumstances even though the county has not yet demonstrated that the failure to report involved a fraudulent act.
- 6 **Notification of disqualification action.** If the administrative fraud hearing finds that the household member committed fraud, the county shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the date disqualification will take effect. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. In addition, the remaining household members shall be informed that if they are not satisfied with the county's determination of their benefits during the three-month disqualification period, they may request a fair hearing. The procedures for handling the income and resources of the disqualified member are described in 63-503.54.
- 7 **Court imposed disqualifications.**
 - 71 A court of appropriate jurisdiction, with either the state, county, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than six months and not more than 24 months if the court finds that individual guilty of civil or criminal fraud. Court-ordered disqualifications may be imposed separate and apart from any action taken by the county to disqualify the individual through an administrative fraud hearing.
 - 72 County welfare departments are encouraged to refer for prosecution under state or local fraud statutes those individuals suspected of committing fraud, particularly if large amounts of food stamps are suspected of being fraudulently obtained or the individual is suspected of committing more than one fraudulent act. The county shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution.
 - 73 Counties shall disqualify an individual found guilty of fraud by the courts only if the court orders disqualification and only for the length of time specified by the court. If disqualification is ordered but a date for initiating the disqualification period is not specified, the county shall initiate the disqualification period with the first month following the date the disqualification was ordered. A court-ordered disqualification may run concurrently with the three-month period of disqualification imposed as a result of an administrative fraud hearing. The county shall not initiate or continue a court imposed or administratively imposed fraud disqualification period contrary to a court order.
- 8 **Reversed fraud disqualifications.** In cases where the determination of fraud is reversed by a court of appropriate jurisdiction, the county shall reinstate the individual in the Program if the household is eligible. The county shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in 63-802.

The following are excerpts from the Department of Social Services Manual of Policies and Procedures which are regulations on the state hearing process. These procedures are also applicable to Administrative Fraud Hearings.

22-010 AUTHORIZED REPRESENTATIVE

22-010

- .1 The claimant may authorize a representative to represent him/her at the hearing by signing a written statement to that effect or by stating at the hearing that the person is so authorized. The authorization may be limited in scope or duration by the claimant, and may be revoked at any time.
- .2 If the claimant has not authorized the representative in writing and is not present at the hearing, the person may be recognized as the authorized representative if, at the hearing, the person swears or affirms under penalty of perjury that the claimant has so authorized him/her to act as the claimant's authorized representative, and the hearing officer further determines the person is so authorized. The hearing officer may make the determination by contacting a collateral source (i.e., the claimant). In all such cases a written authorization must be submitted after the hearing.
- .3 Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant.
- .4 After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall simultaneously send copies to the authorized representative of any subsequent correspondence that it has with the claimant regarding the state hearing.

22-023 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING

22-023

- .12 Each case for which a state hearing request has been filed shall be assigned to a county representative who shall assume the major responsibility for preparing the case in accordance with the requirements of this Division and/or presenting it at the hearing. The county representative shall not have had immediate prior involvement with the case.
- .2 Preparation for the State Hearing

Prior to the hearing, the county representative shall:

 - .21 Determine the issues raised by the hearing request. If the request for hearing does not clearly set forth the claimant's basis for appeal, the county representative shall immediately contact the claimant for clarification.
 - .22 After determining the issues, the county representative shall review the applicable statutes, regulations and policies in light of the evidence which exists in the case record. In conducting this initial review, the representative shall contact the eligibility worker and other county personnel as appropriate. When assistance of the State Department of Social Services or the State Department of Health Services is required to clarify any questions, such assistance shall be sought without delay.
 - .23 After conducting the initial review, the county representative shall make a determination concerning the appropriateness of the county action.
 - .231 If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant and attempt to resolve the case without a hearing. The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054 is usually appropriate in such instances.
 - .232 If the county representative determines that the county action was correct, the county representative shall contact the claimant and:
 - a. Inquire if the claimant plans to attend the hearing;
 - b. Determine if there are any further contentions which the claimant will attempt to raise at the hearing; and
 - c. Provide any and all information which can be of assistance to the claimant in preparing for the hearing. This shall include revealing to the claimant any and all evidence which might be favorable to the claimant's case. The county representative may explain to the claimant the right to withdraw the request for hearing; however, a request for such a withdrawal is prohibited.
 - .24 The county representative shall determine if an interpreter will be necessary at the hearing or if a home hearing will be necessary. The county representative shall notify the Office of the Chief Referee if the claimant has requested an interpreter or home hearing. The county representative shall also report without delay to the Chief Referee any changes in the claimant's address or any other circumstances which might affect the necessity for or conduct of the hearing. This responsibility to report changes in the claimant's circumstances continues after the hearing until a decision is rendered.
 - .25 Prior to each hearing, the county representative shall prepare a typewritten position statement. The position statement shall summarize the facts of the case and set forth the regulatory justification for the county's action. If the issue concerns the amount of aid, grant adjustment, or a demand for repayment, the county representative must include in the position statement a complete final budget computation, month by month, for the period in issue. The county shall include as attachments to the position statement copies of documentary evidence and a list of witnesses which the county intends to use during the hearing. The documents shall be itemized on the last page of the position statement and attached as exhibits.
 - .26 While preparing for the hearing, the county representative shall determine if the presence of the eligibility worker or other county witnesses would be helpful for the resolution of the issue.
 - .27 At the hearing, the county representative shall assume full responsibility for presentation of the county's case. Such presentation shall include:
 - .271 Summarizing the written position statement;
 - .272 Presenting the testimony of county witnesses;
 - .273 Cross-examining the testimony of the claimant and the claimant's witnesses;
 - .274 Responding to any questions from the claimant or hearing officer concerning the case; and
 - .275 Having the county case record available at the hearing. The county representative shall have authority at the hearing to make binding agreements and stipulations on behalf of the county welfare department.

.1 If the hearing is held in a county other than the responsible county, the welfare department of the responsible county may elect any of the following procedures:

- .11 Send a county representative, with the case record, to the hearing; or
- .12 The county of responsibility may submit a written statement summarizing its action. Said summary shall include all of the information in the county's possession regarding the point or points at issue, both supporting and opposing its action, together with any relevant dates and any arguments the county desires to make. The county shall attach all pertinent documents to the summary statement. The summary statement shall be signed under penalty of perjury and contain a waiver of procedural defects of proceeding with the hearing in the absence of the county representative. The summary statement and pertinent documents, shall be mailed at least five days prior to the hearing to the claimant, the authorized representative, and to the place of the hearing with instructions that the statement and attachments be presented to the hearing officer at the time of the hearing.
- .13 Send the case record, or a certified copy thereof, containing all relevant information in the county welfare department's possession, to the welfare department of the county in which the claimant is living, with the request that the county represent the responsible county at the hearing. The responsible county shall declare under penalty of perjury that the record submitted is the case record of the claimant. If certified copies of the record are sent instead of the original, the responsible county shall declare under penalty of perjury that the copies are true copies of the original records. The request should be made in sufficient time to allow the county in which the claimant is living to arrange for representation or to notify the responsible county of its inability to provide such representation. The responsible county welfare department would then, necessarily, follow one of the other two procedures.

22-045 SETTING THE HEARING

22-045

.1 Place of Hearing

The state hearing shall be held in the county in which the claimant is living at the time of the hearing. If the claimant is unable to attend the hearing at the hearing location for reasons of poor health, the hearing shall be held in the claimant's home or in another place agreed to by the county and the claimant.

.2 The hearing shall be conducted at a reasonable time, date, and place.

.3 Notification

The Office of the Chief Referee shall mail or deliver to the claimant and the county a written notice of the time and place of the hearing not less than fifteen days prior to the hearing.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES

22-049

.1 Attendance at the hearing shall be limited to those directly concerned. The hearing officer shall exclude unauthorized persons from the hearing unless the claimant agrees to their presence and the hearing officer determines that their presence will not be adverse to the hearing. Appearance by the claimant (in person or by the authorized representative) is required at the hearing, unless the hearing is a rehearing. The hearing officer may exclude a witness during the testimony of other witnesses; however, both the county and the claimant have the right to have a representative present throughout the hearing. The hearing officer shall have the authority to exclude persons who are disruptive of the hearing.

.2 The hearing shall be conducted in an impartial manner. All testimony shall be submitted under oath, affirmation, or penalty of perjury.

.3 The proceedings at the hearing shall be reported by tape recorder or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

.4 The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or claimant which they have jointly agreed, prior to the or at the state hearing, to discuss.

.41 Notice of an Issue

If the claimant contends that he or she did not receive adequate notice required by Section 22-021.1, this issue must be resolved by the hearing officer at the hearing.

.411 If the hearing officer determines that adequate notice was provided, the claimant must agree to discuss the substantive issue or issues or the case will be dismissed.

.412 If the hearing officer determines that adequate notice was not provided, the case will be postponed unless the claimant waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid (other than those referred to in Section 22-022.11), aid shall be reinstated retroactively and the provisions of Section 22-022.5 shall apply.

.5 An interpreter shall be provided by the state if, prior to the hearing, a party requests an interpreter or if at the hearing, the hearing officer determines that an interpreter is necessary.

.6 When the state hearing is to be held with the assistance of an interpreter, the hearing officer shall determine if the interpreter has been certified by the Department of Social Services. If the interpreter has been certified, the qualifications and competency of the interpreter need not be further examined. If the interpreter has not been certified, the hearing officer shall examine the qualifications and competency of the interpreter. A separate oath or affirmation to translate accurately shall be administered to all interpreters.

.7 The rights of the claimant and the county shall include: The right to examine parties and witnesses; the right to conduct such cross-examination as may be required for a full disclosure of the facts; the right to introduce exhibits; the right to examine all documents prior to and during the hearing; the right to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination; the right to make oral or written argument; and the right to rebut the evidence.

.8 Communications Concerning the Hearing

.81 All documents submitted by either the claimant or the county must be made available to both parties. Copies of all such documents must be provided to the claimant free of charge.

.82 Merits of a pending state hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

22-050 EVIDENCE

22-050

.1 The Introduction of Evidence

The taking of evidence in a hearing shall be conducted by the hearing officer in a manner best suited to ascertain the facts and to control the conduct of the hearing. Prior to taking evidence, the hearing officer shall explain to the extent possible the issues and shall state the order in which evidence shall be reviewed.

.2 The Admissibility of Evidence

Except as provided below, evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The rules of evidence as applicable in judicial proceedings are not applicable in state hearings.

.21 The hearing officer may exclude evidence which is irrelevant, cumulative or unduly repetitious.

.22 The hearing officer shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law.

.3 Weight of Evidence

Although evidence may be admissible under Section 22-050.2, the hearing officer will consider the nature of the evidence in assessing its probative value.

.4 Official Notice

.41 "Official Notice" describes the manner in which a hearing officer or the Director will recognize the existence and truth of certain facts which have a bearing on the issue in the case, without requiring the actual production of evidence to prove such facts.

.42 The hearing officer or Director shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code. Generally, this section provides that judicial notice must be taken of laws, statutes, regulations, official records, and facts and propositions which are of such universal knowledge that they are not reasonably subject to dispute. The hearing officer may take official notice of those matters set forth in Section 452 of the Evidence Code. Generally, this section provides that official notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

.43 The hearing officer may take official notice of any generally accepted technical fact relating to the administration of public social service.

22-051 THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS

22-051

.1 Examination of Records

.11 Upon request, the county welfare department shall allow the claimant to examine the case record during regular working hours (see Section 48-013). If portions of the case record are privileged under the provisions of Section 48-013, the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege.

.12 The claimant shall have the right prior to the hearing, as well as during the hearing, to examine nonprivileged information which the county has used in making its decision to take the action which is being appealed.

.13 The county welfare department shall reproduce without charge or at a charge related to the cost of reproduction, the specific policy materials necessary for an applicant or recipient, or his or her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing. In the Food Stamp Program such material must be made available to the household or its authorized representative at no charge.

.2 Issuance of Subpoenas

.21 Before the hearing has commenced, the Chief Referee, or his designee, upon the written or oral request of the claimant or the county welfare department, shall issue a subpoena requiring the presence of any witness whose expected testimony has been shown to be relevant, and not cumulative or unduly repetitious.

.22 Before the hearing has commenced, the Chief Referee, or a designee, upon the written or oral request of the claimant or the county welfare department, shall issue a subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records. The person who requests the subpoena duces tecum shall submit a statement under penalty of perjury describing the materials desired to be produced and their relevancy. A witness may comply with the subpoena duces tecum by providing certified copies of the material requested.

.23 After the hearing has commenced, the hearing officer assigned to the case may issue a subpoena or subpoena duces tecum as necessary.

.3 The party requesting the subpoena or subpoena duces tecum shall have the responsibility of serving it.

22-052 WITNESS FEES AND MILEAGE

22-052

.1 A witness who is subpoenaed at the request of the claimant and who appears at the hearing may demand payment for witness fees and mileage from the Department of Social Services on a form specified by that Department. The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

.2 A witness who is subpoenaed at the request of the county and who appears at the hearing may demand payment for witness fees and mileage from the county on a form specified by the county. The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

22-053 POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE

22-053

.1 Postponements

- .11 A hearing will be postponed upon request of the claimant prior to the hearing.
 - .111 Any applicable aid pending the hearing shall cease (see Section 22-022.525) unless the claimant establishes good cause as specified in Section 22-053.14.
- .12 A hearing shall be postponed by a hearing officer at the hearing and any applicable aid pending continued if:
 - .121 The claimant establishes good cause as specified in Section 22-053.14.
 - .122 The county has failed to furnish adequate notice within the meaning of Section 22-001.1 and the claimant requests the postponement.
 - .123 The county requests a postponement and the claimant agrees.
- .13 A hearing may be postponed for any other reason at the discretion of the hearing officer.
 - .131 The hearing officer shall order that aid pending be continued only if the postponement is necessary to insure a full and fair hearing and the postponement did not result from any act or omission on the part of the claimant.
- .14 Good cause shall be established if the claimant or authorized representative establishes that the case should be postponed due to:
 - .141 Death in the family.
 - .142 Personal illness or injury.
 - .143 Sudden and unexpected emergencies. Sudden and unexpected emergencies shall include but are not limited to unchangeable medical appointments, court appearances of the claimant, the temporary inability of the claimant to be released from work, or the conflicting schedule of the authorized representative if the conflict is beyond the control of the authorized representative. Vacation or attendance at a social event shall not be regarded as sudden or unexpected emergencies.

.2 Continuance for Additional Evidence

If the hearing officer conducting the hearing determines that evidence not available at the hearing is necessary for the proper determination of the case, the hearing officer may:

- .21 Continue the hearing to a later date. In connection therewith, the hearing officer may direct either party to produce additional evidence.
 - .22 Close the hearing and hold the record open for a stated period not to exceed thirty days in order to permit the submission of additional documentary evidence. Such material shall be submitted within a period not to exceed twenty days after the close of the hearing and shall be made available both to the county and to the claimant. The county and claimant shall each have the right to rebut such submitted material during a stated period not to exceed ten days after the submission of the additional evidence. The hearing officer conducting the hearing may order a further hearing if the nature of the additional information or the rebuttal makes a further hearing necessary.
- .3 A hearing shall not be postponed or continued unless:
- .31 The claimant voluntarily and knowingly executes a written waiver of the 90-day period provided in Section 22-060, or
 - .32 The Chief Referee or the hearing officer determines that a decision of the Director can be issued within the 90-day period provided in Section 22-060.

22-055 DISQUALIFICATION OF A HEARING OFFICER

22-055

A hearing officer shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he or she cannot give a fair and impartial hearing or in which he or she has an interest. A party may request that the hearing officer be disqualified upon the grounds that a fair and impartial hearing cannot be held. The hearing officer shall rule on such a request.

22-059 COMMUNICATIONS AFTER HEARING

22-059

Communications to the Department concerning a case subsequent to the hearing shall be excluded from the record and shall be disregarded prior to the adoption and release of the decision of the Director; except that (a) oral and written communications after the hearing concerning the status of the decision, or the date of delivery of additional evidence to be submitted under the provisions of Section 22-053.22, or protesting a hearing officer's determination under Section 22-022.523 with respect to aid pending a hearing, are not improper; and (b) a hearing officer may on his or her own motion or at the request of either party reopen the record for receipt of additional information if all parties are notified of the reason for the reopening and the submission of such evidence conforms to the requirements of Section 22-053.22.